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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,531	01/09/2004	Yasuhiko Kenmochi	2038-320	6485
22429	7590	07/11/2005	EXAMINER	
LOWE HAUPTMAN GILMAN AND BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 /310 ALEXANDRIA, VA 22314			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/753,531

EXAMINER
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ART UNIT	PAPER
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20050621

DATE MAILED:

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Commissioner for Patents

**Office Action Summary**

Application No.

10/753,531

Applicant(s)

KENMOCHI ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki et al. (US 5,746,730). Regarding claims 1 and 7 Suzuki et al. discloses pull-on disposable wearing article 1 comprising:

Front and rear waist sections 1A, 1B opposed to each other and a crotch region extending between the regions (col. 6, ll. 59-66, figure 3),

A waist-surrounding upper end margin 5 defined by front and rear waist regions and extending in a longitudinal direction and connected to waist hole 3 and leg holes 4 (col. 6, ll. 66-col. 7, line 1, figure 3);

First and second leg-surrounding lateral margins (figure 3);

A liquid-absorbent core 13 laid in front waist region 1A, rear waist region 1B and crotch region (figure 1);

Said crotch region having outer/first and inner/second folding lines L1, L2 formed to extend upwardly from the proximal end toward the distal end of a strip member in a

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diverging relationship toward each other so that two triangles/first and second zones T1, T2 are defined (col. 10, ll. 29-46, figures 21B and 22);

First and second gathers/longitudinal barriers 81, 82 on opposite sides of the core and each comprising first and second elastic strip members and each elastic strip member extending along the leg hole 4 across the first zone to the third zone and across the second zone to the third zone inside the side edge of the core to define a containment zone for absorbing or holding exudates (col. 9, ll. 60-67, col. 10, ll. 10-13, figure 22);

Said inner leg gather that contains first zone T1 and second zone T2 which are tucked convexly inward of the leg hole in the crotch region along folding lines which

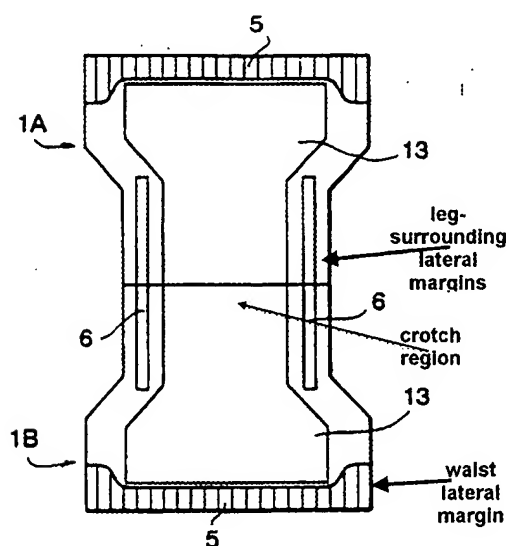


FIG. 3

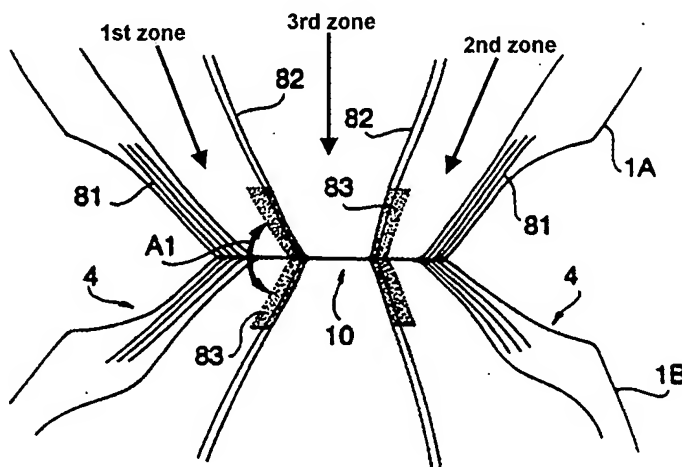


FIG. 22

extend divergently and upwardly from the proximal end toward the distal end so that a cross-over flap 82a is formed (col. 10, ll. 27-33, figure 21A).

Regarding claim 6 Suzuki et al. discloses the article above with respect to claim 1 and further discloses the article comprises an absorbent body 13 interposed between body-facing liquid permeable top sheet 11 and garment-facing liquid impermeable back sheet 12 (col. 7, ll. 4-9, figure 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 2-3, 11-13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (US 5,746,730). Regarding claims 2-3 Suzuki et al. discloses the article with first and second elastic members above with respect to claim 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Suzuki et al. to have contraction percentages and stretch stress in the ranges claimed, since it has been held that where the general conditions of

a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 11 Suzuki et al. discloses first and second elastic members disposed between longitudinal barriers 81, 82 and first and second fold lines above with respect to claim 7. Suzuki et al. does not expressly disclose the members are pre-stretched. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Suzuki et al. to have pre-stretched elastic members since Suzuki et al. discloses a wearing article with first and second elastic members and fold lines.

Regarding claims 12-13 Suzuki et al. discloses first and second elastic members above with respect to claims 7 and 11 but does not expressly disclose the contraction percentage and stretch stress ranges claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Suzuki et al. to include the contraction percentage and stretch stress ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 16 Suzuki et al. discloses the wearing article with core interposed between liquid pervious and liquid impervious sheets discussed above with respect to claims 6 and 11.

3. Claims 4-5, 8-10, 14-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (US 5,746,730) as applied to claim 1, and further in view of Otsubo et al. (US 6,666,851).

The applied reference (Otsubo et al.) has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding claim 4 Suzuki et al. discloses article with first and second zones as discussed above with respect to claim 1. Suzuki et al. does not expressly disclose the core has stiffness lower in the first and second zones than in the third zone. Otsubo et al. discloses a trunk-type disposable diaper 1 comprising: Front and rear opposed waist regions 2, 3 and a crotch region 10 extending between said waist regions (col. 2, ll. 45-50); an elastically stretchable member/waist-surrounding upper end margin 8 (col. 2, ll. 58-62); transversely opposite waist lateral margins are connected to form waist-opening 6 and leg-openings 7 (col. 2, ll. 53-58, figure 1); leg-surrounding lateral margins defined



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by said crotch region and extending in a leg-surrounding direction (figure 1); a liquid-absorbent core 14 in front and rear waist regions and the crotch region (col. 2, line 65, figure 1); said crotch region 10 being formed with a pair of first and second folding guide lines L1, L2 extending transversely across a zone defined between the peripheral edge portions 7a so that said crotch region 10 is divided into triangular first and second zones S1, S2 and a third zone S3 extending from the folding guide lines L1, L2 into the front trunk region 2 (col. 3, ll. 15-18 and 24-30, figure 7); an elastic member 30 with plurality of elements/first and second elastic member disposed along the waist region (col. 4, ll. 30-33); said first and second zones S1, S2 tucked convexly-inwardly of leg-hole of diaper 1 as indicated by arrow X (col. 3, ll. 38-41, figure 3). Otsubo et al. further discloses third zone with a stiffness inherently lower in the first and second zones S1 and S2 since these zones are formed by fold lines and are therefore more flexible than the unfolded third zone in order to be folded. Otsubo et al. does not expressly disclose the first and second elastic members extending in the leg-surrounding direction across the first zone to the third zone and across the second zone to the third zone. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Suzuki et al. to include a third zone with a lower stiffness than in the first and second zones since both references disclose wearing articles with first and second folding guide lines defining first, second and third zones and first and second elastic members.

Regarding claim 5 Suzuki et al. does not expressly disclose that the core is absent in first and second zones. Otsubo et al. discloses the absorbing capacity of core 14 lying in crotch region 10 is not affected by the unfolding of the first and second zones

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S1, S2 since the core 14 lying in the crotch region 10 is dimensionally constant (col. 4, ll. 2-5). Otsubo et al. does not expressly disclose the core is absent in the first and second zones. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Suzuki et al. to include the dimensionally constant core of Otsubo et al. since both references disclose wearing articles with first and second folding guide lines defining first, second and third zones and first and second elastic members.

Regarding claims 8-9 Suzuki et al. discloses a first and second elastic strip member above with respect to claim 1 and further discloses the elastic strip members are joined to top sheet 12 (col. 12, ll. 14-16). Suzuki et al. does not expressly disclose the elastic members are directly attached to the core, disposed below the core, between the core and an impervious cover sheet. Otsubo et al. discloses first and second elastic members above with respect to claim 1. Otsubo et al. further discloses elastic members 31 are disposed and bonded under tension between the top- and backsheets 22, 21 and absorbent core 23 is disposed between these two sheets 21, 22 (col. 4, ll. 15-21 and 35-39). Otsubo et al. does expressly disclose the elastic members are directly attached to the core. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the elastic members of Suzuki et al. to be directly attached to the core, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 10 Suzuki et al. and Otsubo et al. disclose first and second elastic strip member and absorbent core that are tucked inwardly as discussed above

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with respect to claim 1. Otsubo et al. further discloses when the first and second zones S1, S2 containing elastics are tucked in, a transverse dimension M of the crotch region 25 is smaller than the corresponding dimension M before the zones S1, S2 are tucked in (col.4 , ll. 57-61 and figure 7). It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Suzuki et al. to include the shorter elastic members of Otsubo et al. since both references disclose wearing articles with first and second folding guide lines defining first, second and third zones and first and second elastic members.

Regarding claims 14-15 Suzuki et al/Otsubo et al. disclose the core stiffness and core absence as discussed above with respect to claims 4-5 and 11.

Regarding claim 17 Suzuki et al/Otsubo et al. disclose the wearing article as with first and second elastic members and core discussed above with respect to claims 1 and 11. Otsubo et al. further discloses welding spots/third elastic members 27 arranged so that in use they rise above said core 13 and first and second elastic members (col. 4, ll. 24-30, figure 6).

Regarding claims 18-20 Suzuki et al/Otsubo et al. disclose the first and second elastic members as discussed above with respect to claims 8-11.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

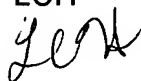
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700